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10/748,953	12/30/2003	Mary Rose Rice	14177-1600	7896

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EXAMINER
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CASCHERA, ANTONIO A

ART UNIT	PAPER NUMBER
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2676

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/748,953

Applicant(s)

RICE, MARY ROSE

Examiner

Antonio A. Caschera

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>09/26/05</u>  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 09/26/05 was filed after the mailing date of the non-final action on 05/04/05. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Microsoft PhotoDraw 2000 (known herein as PhotoDraw) (Microsoft Corp. © 1995-1999, version 2.0.0.1229, Screenshots 1-17).

In reference to claim 1, PhotoDraw discloses a method for displaying color swatches in a color palette whereby a new color palette can be created via an object “Fill” color option (see Screenshots, Figures 1-4). PhotoDraw discloses the option of a user to create a custom color palette using a color picker whereby a plurality of colors can be selected and inserted into the palette (see Figure 5, color picker window entitled, “Choose Color” and cursor tooltip/caption). PhotoDraw discloses the capabilities of allowing a user, operating an input device such as a

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mouse, to select a plurality of paint colors and place them into a palette by designating a swatch for every color of the palette (see Figures 6-8). Note, the Office interprets the swatches of PhotoDraw (see the white outlined rectangles within the custom palette of Figure 8) functionally equivalent to the “sample cards” of Applicant’s claim. Further, PhotoDraw allows arranging the swatches within the custom palette so that the swatches gradually vary in hue in a vertical direction while gradually varying in saturation, also known as chroma, in the horizontal direction (see Figures 10-13 for varying hue, noting the hue values in the “Choose Color” window and the up/down selection of color swatches and Figures 14-16, for varying chroma, noting the saturation values in the “Choose Color” window and the left-to-right selection of color swatches).

In reference to claim 2, PhotoDraw discloses all of the claim limitations as applied to claim 1 above in addition, PhotoDraw discloses defining a plurality of color categories by allowing for each row of the color palette to comprise a specific hue angle value and arranging all swatches with equal hue values into the same row (see Figures 10-13, noting the hue values in the “Choose Color” window, 359 = 1<sup>st</sup> row, 270 = 2<sup>nd</sup> row, 180 = 3<sup>rd</sup> row and 90 = 4<sup>th</sup> row). PhotoDraw discloses each hue angle row to be sorted by chroma (saturation) values (see row #1 of Figures 14-16).

In reference to claim 3, PhotoDraw discloses all of the claim limitations as applied to claim 2 above. Since, PhotoDraw discloses allowing the user to select and add paint colors to a custom color palette which is further categorized by hue/saturation (see Figure 5 and Figures 10-13, noting the hue values in the “Choose Color” window, 359 = 1<sup>st</sup> row, 270 = 2<sup>nd</sup> row, 180 = 3<sup>rd</sup> row and 90 = 4<sup>th</sup> row), the Office interprets that PhotoDraw inherently discloses adding colors to

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a category based on expert human input because the user is performing the addition of colors himself using an input device to control the displayed pointer (see pointer of Figures 1-16).

In reference to claim 5, PhotoDraw discloses all of the claim limitations as applied to claim 1 above. PhotoDraw allows arranging the swatches within the custom palette so that the swatches gradually vary in hue in a vertical direction while gradually varying in saturation, also known as chroma, in the horizontal direction (see Figures 10-13 for varying hue, noting the hue values in the “Choose Color” window and the up/down selection of color swatches and Figures 14-16, for varying chroma, noting the saturation values in the “Choose Color” window and the left-to-right selection of color swatches). This creates a plurality of “white tinted” color swatches for each hue angle value, arranged adjacent to other color swatches who have equivalent hue values in each row (see lighter colored swatches located in the right most portion of the four rows of the custom color palette in Figure 16).

In reference to claim 6, PhotoDraw discloses all of the claim limitations as applied to claim 1 above. PhotoDraw allows arranging the swatches within the custom palette so that the swatches gradually vary in hue in a vertical direction while gradually varying in saturation, also known as chroma, in the horizontal direction (see Figures 10-13 for varying hue, noting the hue values in the “Choose Color” window and the up/down selection of color swatches and Figures 14-16, for varying chroma, noting the saturation values in the “Choose Color” window and the left-to-right selection of color swatches).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Microsoft PhotoDraw 2000 (known herein as PhotoDraw) (Microsoft Corp. © 1995-1999, version 2.0.0.1229, Screenshots 1-17).

In reference to claim 4, PhotoDraw discloses all of the claim limitations as applied to claim 2 above. Although PhotoDraw inherently discloses arranging and displaying color swatches in a custom color palette so that the most chromatic cards are arranged left-to-right (see Figures 14-16, for varying chroma, noting the saturation values in the "Choose Color" window and the left-to-right selection of color swatches), PhotoDraw does not explicitly disclose displaying swatches so that the most chromatic cards are at the top of a column and gradually decreasing in value toward the bottom of the column with the least chromatic at the bottom. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to modify the current configuration of the swatches in the custom color palette of PhotoDraw in order to comply with the chromatic column color limitations of Applicant's invention. Applicant has not disclosed that specifically orienting the colors by chroma values in a vertical orientation provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the horizontal ordering of chroma values of PhotoDraw because exact orientation of colors does not provide an immediate criticality to the application at hand and in

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this case, is a matter that may be preferred by the designer or user of the invention. Further, since PhotoDraw allows for the creation of a custom color palette and arrangement of color swatches within the palette, the Office interprets that the exact configuration of colors, as claimed by Applicant, could easily be obtainable in PhotoDraw. Therefore, it would have been obvious to one of ordinary skill in this art to modify PhotoDraw to obtain the invention as specified in claim 4.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Microsoft PhotoDraw 2000 (known herein as PhotoDraw) (Microsoft Corp. © 1995-1999, version 2.0.0.1229, Screenshots 1-17) in view of "Painting on Location Lesson-RCW, The Original Real Color Wheel," Jusko, Donald, A. Last Updated on 09/14/2003 (known herein as Jusko).

In reference to claim 7, PhotoDraw discloses all of the claim limitations as applied to claim 1 above however, PhotoDraw does not explicitly disclose arranging one or more color combination sample cards adjacent to the first plurality of sample cards. Jusko discloses a color wheel comprising color slices arranged adjacent to one another (see #1-36 of color wheel). Jusko also discloses each color slice comprising related colors arranged adjacent to the outside most color of the slice along with complementary colors arranged along an inner-most ring of the wheel found by traveling towards the center of the wheel along a color slice (see the color wheel of Jusko). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the color arrangement techniques of Jusko with the color palette arrangement techniques of PhotoDraw in order to provide more clear and concise differences between similar colors, allowing a user to choose a most desirable color for use.

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5. Claims 8-10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Microsoft PhotoDraw 2000 (known herein as PhotoDraw) (Microsoft Corp. © 1995-1999, version 2.0.0.1229, Screenshots 1-17) in view of Wright et al. (U.S. Pub. 2004/0046802 A1).

In reference to claims 8 and 12, PhotoDraw discloses displaying color swatches in a color palette whereby a new color palette can be created via an object “Fill” color option (see Screenshots, Figures 1-4). PhotoDraw discloses the option of a user to create a custom color palette using a color picker whereby a plurality of colors can be selected and inserted into the palette (see Figure 5, color picker window entitled, “Choose Color” and cursor tooltip/caption). PhotoDraw discloses the capabilities of allowing a user, operating an input device such as a mouse, to select a plurality of paint colors and place them into a palette by designating a swatch for every color of the palette (see Figures 6-8). Note, the Office interprets the swatches of PhotoDraw (see the white outlined rectangles within the custom palette of Figure 8) functionally equivalent to the “sample cards” of Applicant’s claim. Further, PhotoDraw allows arranging the swatches within the custom palette so that the swatches gradually vary in hue in a vertical direction while gradually varying in saturation, also known as chroma, in the horizontal direction (see Figures 10-13 for varying hue, noting the hue values in the “Choose Color” window and the up/down selection of color swatches and Figures 14-16, for varying chroma, noting the saturation values in the “Choose Color” window and the left-to-right selection of color swatches). This creates a plurality of “white tinted” color swatches for each hue angle value, arranged adjacent to other color swatches who have equivalent hue values in each row (see lighter colored swatches located in the right most portion of the four rows of the custom color palette in Figure 16). Although PhotoDraw inherently discloses arranging and displaying color



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swatches in a custom color palette so that the most chromatic cards are arranged left-to-right (see Figures 14-16, for varying chroma, noting the saturation values in the “Choose Color” window and the left-to-right selection of color swatches), PhotoDraw does not explicitly disclose displaying swatches so that the most chromatic cards are at the top of a column and gradually decreasing in value toward the bottom of the column. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to modify the current configuration of the swatches in the custom color palette of PhotoDraw in order to comply with the chromatic column color limitations of Applicant’s invention. Applicant has not disclosed that specifically orienting the colors by chroma values in a vertical orientation provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant’s invention to perform equally well with the horizontal ordering of chroma values of PhotoDraw because exact orientation of colors does not provide an immediate criticality to the application at hand and in this case, is a matter that may be preferred by the designer or user of the invention. Further, since PhotoDraw allows for the creation of a custom color palette and arrangement of color swatches within the palette, the Office interprets that the exact configuration of colors, as claimed by Applicant, could easily be obtainable in PhotoDraw. Therefore, it would have been obvious to one of ordinary skill in this art to modify PhotoDraw to obtain the invention as specified in claim 8. PhotoDraw however, does not explicitly disclose a card display structure adapter for displaying color sample cards in a plurality of columns and rows. Wright et al. discloses a color selection system by which a user of the system may generate a palette of colors (see paragraph 1, lines 1-3 of Wright et al.). Wright et al. discloses the color selection system based upon a computer system which Wright et al. further

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discloses to comprise of a color monitor having a screen for displaying images (see paragraph 31, lines 1-4). Wright et al. discloses arranging colors in a palette up for selection based upon hue, chroma and value attributes of colors (see paragraph 48 and Figure 3 of Wright et al.). Wright et al. specifically discloses grouping colors with decreasing chroma in a row-by-row format (see paragraph 48, lines 8-12 and Figure 3). Note, as seen above in reference to PhotoDraw, the Office interprets the plurality of colors with “lower” chroma values in a single column, equivalent to “white paint colors” as these “white paint colors” are adjacent to colors having similar hues (see header of palette (5R, 10R...hue values) and column (/0, /2, /4...chroma values) of Figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the custom color palette creation techniques including color arrangement techniques, of PhotoDraw with the computer system employing a color monitor display of Wright et al. in order to execute the above methods of PhotoDraw since Microsoft PhotoDraw is an executable program, functioning with a computer system permitting a user to enter data and initiating color palette creation (see paragraph 31, lines 4-17 of Wright et al.). Further in reference to claim 12, the Office interprets the color monitor of Wright et al. functionally equivalent to the display unit of Applicant’s claim as the monitor displays a two-dimensional array of color values, having a plurality of contiguous hue regions of a full range of hue values (see header of palette in Figure 3, (5R, 10R...10RP)).

In reference to claim 9, PhotoDraw and Wright et al. disclose all of the claim limitations as applied to claim 8 above. PhotoDraw allows arranging the swatches within the custom palette so that the swatches gradually vary in hue in a vertical direction while gradually varying in saturation, also known as chroma, in the horizontal direction (see Figures 10-13 for varying hue,

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noting the hue values in the “Choose Color” window and the up/down selection of color swatches and Figures 14-16, for varying chroma, noting the saturation values in the “Choose Color” window and the left-to-right selection of color swatches). This creates a plurality of “white tinted” color swatches for each hue angle value, arranged adjacent to other color swatches who have equivalent hue values in each row (see lighter colored swatches located in the right most portion of the four rows of the custom color palette in Figure 16).

In reference to claim 10, PhotoDraw and Wright et al. disclose all of the claim limitations as applied to claim 8 above. PhotoDraw allows arranging the swatches within the custom palette so that the swatches gradually vary in hue in a vertical direction while gradually varying in saturation, also known as chroma, in the horizontal direction (see Figures 10-13 for varying hue, noting the hue values in the “Choose Color” window and the up/down selection of color swatches and Figures 14-16, for varying chroma, noting the saturation values in the “Choose Color” window and the left-to-right selection of color swatches). This creates a plurality of color swatches for each hue angle value, arranged adjacent to other color swatches who have equivalent hue values but varying chroma values in each row (see above referenced Figures 10-16).

In reference to claim 13, PhotoDraw and Wright et al. disclose all of the claim limitations as applied to claim 12 above. Since each color swatch in PhotoDraw is equivalent to a color sample card, as interpreted by the Office, and also since each swatch comprises one hue value and one chroma value, the Office interprets that PhotoDraw inherently discloses the color swatches having colors spanning less than a total hue range and a total chroma range of a first hue region or row in the custom palette shown in Figures 10-16 of PhotoDraw.

In reference to claim 14, PhotoDraw and Wright et al. disclose all of the claim limitations as applied to claim 12 above. Since each color swatch includes one value of chroma, the Office interprets that each color swatch inherently represents a different chromatic range. For example, a color swatch with chroma value 25 inherently excludes the range of values 0-24 and 26-100.

In reference to claim 15, PhotoDraw and Wright et al. disclose all of the claim limitations as applied to claim 12 above. Since each color swatch of PhotoDraw includes one hue value associated thereto and applying the above methodology presented in claim 14, the Office interprets that the swatches have non-overlapping hue ranges relative to each other.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Microsoft PhotoDraw 2000 (known herein as PhotoDraw) (Microsoft Corp. © 1995-1999, version 2.0.0.1229, Screenshots 1-17), Wright et al. (U.S. Pub. 2004/0046802 A1) and further in view of "Painting on Location Lesson-RCW, The Original Real Color Wheel," Jusko, Donald, A. Last Updated on 09/14/2003 (known herein as Jusko).

In reference to claim 11, PhotoDraw and Wright et al. disclose all of the claim limitations as applied to claim 8 above however, neither PhotoDraw nor Wright et al. explicitly disclose arranging one or more color coordination sample cards adjacent to the first plurality of sample cards. Jusko discloses a color wheel comprising color slices arranged adjacent to one another (see #1-36 of color wheel). Jusko also discloses each color slice comprising related colors arranged adjacent to the outside most color of the slice along with complementary colors arranged along an inner-most ring of the wheel found by traveling towards the center of the wheel along a color slice (see the color wheel of Jusko). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the color arrangement

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techniques of Jusko with the color palette arrangement techniques of PhotoDraw and computer system employing a color monitor display of Wright et al. in order to provide more clear and concise differences between similar colors, allowing a user to choose a most desirable color for use.

### *Response to Arguments*

7. Applicant's arguments, see page 2 of Applicant's Remarks, filed 11/03/05, with respect to the objection of the drawings have been fully considered and are persuasive. The objection of the drawings has been withdrawn since reference numbers have been corrected for and included in the specification.

8. Applicant's arguments filed 11/03/05 have been fully considered but they are not persuasive.

In reference to claims 1-3, 5 and 6, Applicant argues that PhotoDraw is a not a prior art reference, "just because a software program [PhotoDraw] has the power and flexibility of displaying swatches of color dictated by the claimed invention," since the invention teaches, "arranging a plurality of physical paint sample cards in a two dimensional display as claimed," (see page 3, 1<sup>st</sup> paragraph of Applicant's Remarks). Applicant seems to present an argument of hindsight reasoning based upon the cited case law (see page 3, 1<sup>st</sup> paragraph of Applicant's Remarks). Firstly, the specific element of the paint sample cards being "physical" is not seen within the claims. It is noted that the features upon which applicant relies (i.e., "physical paint sample cards") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In*

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*re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, the swatches of PhotoDraw can be and are interpreted as the paint sample cards. Secondly, the PhotoDraw reference does, in fact, teach the display of arranged colors on a display as recited in the claims. Since the claims do not bring about the limitation nor even the idea that the colors are actual physical elements, the Office interprets the colors displayed on a display as being computer software related elements. Therefore the PhotoDraw reference is directly applicable and the Office maintains its rejection based upon the PhotoDraw reference.

In reference to claim 7, Applicant argues that the combination of PhotoDraw and the RCW color wheel reference (Jusko) does not teach such an arrangement as amended in claim 7 (see page 3, last paragraph of Applicant's Remarks). The Office points out that the amendment to claim 7 has not changed the scope of the claim so that the above prior art can no longer be applied. Therefore, the Office maintains its current rejection based upon PhotoDraw and the Jusko reference.

In reference to claims 8 and 12, Applicant argues that the combination of PhotoDraw and Wright et al. does not teach such an arrangement as amended in claims 8 and 12 (see page 4, 3<sup>rd</sup>-4<sup>th</sup> paragraphs of Applicant's Remarks). The Office points out that the amendments to claims 8 and 12 have not changed the scope of the claims so that the above prior art can no longer be applied. Therefore, the Office maintains its current rejection based upon PhotoDraw and Wright et al..

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Antonio Caschera whose telephone number is (571) 272-7781. The examiner can normally be reached Monday-Thursday and alternate Fridays between 7:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung, can be reached at (571) 272-7794.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

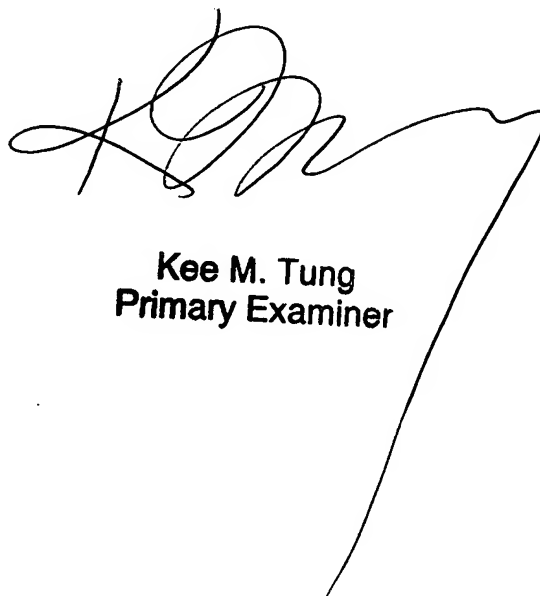
**or faxed to:**

**571-273-8300 (Central Fax)**

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (571) 272-2600.

aac  
*AAC* PATENT EXAMINER  
3/15/06



Kee M. Tung  
Primary Examiner